IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

Crl.Rev.Pet.No. 3424 of 2007()

CRA.284/2002 of II ADDL.SESSIONS COURT, KOLLAM
CC.354/2002 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOTTARAKKARA

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REVN. PETITIONER: APPELLANT/ACCUSED

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1. VIJAYAN, MAROTTUM VEEDU, KONGALCHERRY, PARAVOOR VILLAGE.

2. VIVEK, S/O.VIJAYAN, MAROTTUM VEEDU, KONGALCHERRY, PARAVOOR VILLAGE.

BY ADV. SRI.WILSON URMESE
SRI.K.M.SALIM

RESPONDENTS: RESPONDENT/COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 27/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3424 OF 2007

Dated this the 27th day of September, 2007

O R D E R

The revision petitioners, who are a father and a son, who are A1 and A2 respectively in C.C.No.354/02 on the file of the JFCM-II, Kottarakkara, challenge the conviction entered and the sentence passed by the courts below concurrently. The revision petitioners were prosecuted by the Sub Inspector of Police, Paravoor for offences punishable under sections 341, 323 and 324 read with section 34 IPC.

2. The case of the prosecution can be summarized as follows:-

On account of the enmity towards PW1 stemming from a civil dispute between the parties and with the intention of voluntarily causing hurt to PW1, the two accused persons(father and son) attacked PW1 at 6.30 p.m. on 11.6.97 while on the Paravoor-Maniyamkulam public road. During the course of the occurrence, A1 wrongfully restrained PW1 from proceeding in any direction in which he wanted to go and A2 picked up a rubble and inflicted blows on the back side of the head and below the right eye of

PW1. Both the accused slapped and fisted at PW1 on different parts of his body.

3. On the accused pleading not guilty to the charge framed against them by the trial court, the prosecution was permitted to adduce evidence in support of its case. The prosecution altogether examined 7 witnesses as PWs 1 to 7 and got marked 5 documents as Exts.P1 to P5.

4. The accused denied the incriminating circumstances put to them when examined under section 313 Cr.P.C. and maintained their innocence. They did not adduce any defence evidence when called upon to do so.

5. The learned Magistrate after trial, as per judgment dated 11.10.02 convicted the revision petitioners of the offences punishable under sections 341 and 324 IPC. For the conviction under section 341 IPC, each of them was sentenced to pay a fine of Rs.500/- and on default to pay the fine, to undergo simple imprisonment for 15 days. For the conviction under section 324 IPC, each of the accused was sentenced to undergo simple imprisonment for two years and to pay a fine of Rs.5,000/- and on default to pay the fine, to undergo simple imprisonment for six

months. The accused were, however, found not guilty of the offence punishable under section 323 IPC.

6. On appeal preferred by the revision petitioners before the Sessions Court, Kollam as Crl.Appeal No.284/02, the learned II Additional Sessions Judge, Kollam as per judgment dated 6.7.2007 confirmed the conviction and sentence under section 341 IPC but altered the conviction under section 324 to one punishable under section 323 IPC and sentenced each of the accused to simple imprisonment for three months and to pay a fine of Rs.1,000/- and on default to pay the fine, to undergo simple imprisonment for one month. It is the said judgment which is assailed in this revision.

7. The learned counsel appearing for the revision petitioners assailed the conviction recorded against them contending, inter alia, as follows:-

Out of the three eye witnesses examined as PWs 1 to 3, PW1, the injured, alone supported the prosecution. PW2 who is an independent witness and PW3 who is a relative of the defacto complainant did not support the prosecution. The injuries sustained by PW1 were not as a result of the occurrence as

alleged. PW4, the Doctor who proved Ext.P2 wound certificate, has deposed that those injuries could be sustained in the course of a fall as well. Moreover, the injuries revealed by Ext.P2 wound certificate did not fit in with the occular evidence of PW1. That apart, the testimony of PW1 is full of contradictions and omissions and the conviction recorded and the sentence passed cannot, therefore, be sustained.

8. I am afraid that I cannot agree with the above submissions. The first accused and the defacto complainant are brothers. The second accused is the son of the first accused. The motive for the occurrence was admittedly a property dispute existing between them. It is true that PW2, an independent witness and PW3 who is the son of another brother of both A1 and the defacto complainant turned hostile to the prosecution. PW3 is a relative of the accused which explains his disloyalty to the prosecution. As against this, the testimony of PW1, the defacto complainant, has been found to be credible enough to justify the conviction. The trial Magistrate who had the unique advantage of seeing the witnesses and assessing their credibility, has chosen to believe PW1. There is no reason why PW1, the injured, should

falsely implicated the accused and shield the real culprit. The medical possibility of PW1 sustaining injuries in the course of fall as elicited through the doctor does not in any way improbabulise or falsify the prosecution case. The conviction has been recorded by the courts below after a careful evaluation of the oral and documentary evidence. Sitting in the rarefied revisional jurisdiction, this court will be loathe to interfere with the same unless this court is satisfied that the appreciation of the evidence by the courts below has been faulty. This court is not satisfied that the courts below have wrongfully appreciated the evidence of the witnesses. The conviction is accordingly confirmed.

9. What now survives for consideration is the question as to the adequacy or otherwise of the sentence imposed on the revision petitioners. The motive which impelled the father and son to mount an attack on the defacto complainant(PW1) is the existing property dispute. The evidence on record shows that the accused were not previously armed with any weapon. Moreover, the parties are near relatives. Under these circumstances, I do not think that the revision petitioners deserve penal servitude by way of incarceration for the conviction under section 323 IPC.

Accordingly, the sentence imposed on them under section 323 IPC by the lower appellate court is set aside and instead, they are directed to undergo imprisonment till the rising of the court and to pay a compensation of Rs.3,000/- (Rupees three thousand only) to PW1 under section 357(3) Cr.P.C. The fine amount under section 341 IPC and the compensation amount under section 323 IPC shall be paid within one month from today. If the compensation amount is not paid within the said period, the defaulting petitioners shall suffer simple imprisonment for one month by way of default sentence. The sentence imposed on the revision petitioners under section 341 IPC is not interfered with.

In the result, this revision petition is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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